

HISTORIC PRESERVATION PERMIT AMENDMENT

FILE NO.	HPA16-004-01
LOCATION OF PROPERTY	3556 San Felipe Road
ZONING DISTRICT	CN Commercial Neighborhood
GENERAL PLAN DESIGNATION	Neighborhood/Community Commercial
PROPOSED DESCRIPTION	Historic Preservation Permit Amendment to allow construction of a six-foot tall solid wall along a new lot line at the rear, with an approximately five-foot setback at a rear corner of the historic house.
ENVIRONMENTAL STATUS	Exempt pursuant to CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation
HISTORIC SITE DESIGNATION	City Landmark HLA86-031-01 (Resolution 59146)– “Smith House”
OWNER/ADDRESS	Bill Mabry Oakmont of Evergreen LLC 9240 Old Redwood Highway, Ste. 200 Windsor, CA 95492
APPLICANT/ADDRESS	John Frolli Strata Design Studio P.O. Box 1127 San Jose, CA 95108

FACTS

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. This Historic Preservation Permit Amendment to allow the construction of a six-foot tall solid stucco wall along a new lot line, with an approximately five-foot setback, at the rear of a City Landmark Structure, HL86-031 (historic Smith House). The work is associated with the lot split under a separate application which will create two parcels 0.44-acres and 3.98-acres from the City Landmark site. The Smith House will be located on the smaller 0.44-acre parcel. The site is bounded by a church and vacant land to the north, residential care facility (under construction) to the east, single family residences to the west, across San Felipe Road and a beauty salon to the south.
2. The subject site has a designation of Neighborhood/Community Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram.

3. The subject site is in the CN Commercial Neighborhood Zoning District. Pursuant to Section 20.100.1030.B and Chapter 13.48 of Part 3 of Title 13 of the Zoning Ordinance, modifications to a City Landmark Structure, to allow the six-foot tall site wall to run along the proposed new lot line at the rear of the Smith House, requires a Historic Preservation Permit Amendment.
4. On May 20, 1986, the City Council designated the property as a City Landmark (#HL86-031, Resolution No. 59146).
5. On May 15, 2017, the Historic Landmarks Commission approved a Historic Preservation Permit (File No. HP16-004) for relocation of the Smith House and the associated tank house, pump house, and aviary, approximately 85 feet south from its original location to allow for a new senior care living facility (under construction).
6. On March 14, 2017, the City Council approved a Conforming Rezoning of the site, with File No. C16-029 (Ordinance No. 29889), to allow rezoning from the A Agricultural and R-1-5 Single Family Residence Zoning Districts to the CN Commercial Neighborhood Zoning District.
7. On April 26, 2017, the Planning Commission approved a Conditional Use Permit (File No. CP16-029), with Resolution No. 17-011, to allow a residential care facility providing 94 assisted units with 109 beds on a 4.42-gross acre site.
8. On October 30, 2017, the City approved a Lot Line Adjustment (File No. AT16-026) to merge three adjacent parcels into the one larger 4.42-gross acre site.
9. On September 4, 2019 the applicant requested to split the 4.42-gross acre parcel into two lots (File No. T19-031), with the Smith House to be located on a smaller 0.44-acre parcel fronting San Felipe Road.
10. On October 2, 2019 the applicant applied for a Mills Act Contract (File No. MA19-004) for the further rehabilitation, restoration and maintenance of the Smith House, features, and site.
11. On February 7, 2020, the applicant filed a Historic Preservation Permit Amendment (File No. HPA16-004-01) and Historic Landmark Designation Amendment (File No. HLA86-031-01) to allow the re-designation of the legal boundary of the Smith House with a lot split and to build a six-foot high wall dividing the two land uses.
12. On February 19, 2020, the project was referred to the Design Review Committee (DRC), which was attended by three members of the Historic Landmarks Commission.
13. Per DRC's recommendation, staff has worked with the applicant to request that the wall be completely covered with green vines, shrubs and additional trees and landscaping both in front and to the rear of the Smith House to provide a softened green visual effect. This will also be made a condition of approval of the Historic Preservation Permit.
14. The subject Historic Preservation Permit Amendment was referred to the Historic Landmarks Commission on May 6th, 2020 for recommendation of approval to the Director of Planning.

Historic Preservation Ordinance

The Historic Preservation Ordinance states that no person shall perform any work on a City Landmark or in a City Landmark District except pursuant to, and in compliance with, the terms and conditions of a Historic Preservation Permit or an Amendment. "Work" shall include:

Construction, reconstruction, alteration, rehabilitation, restoration, demolition, removal, or relocation of any structure or portion thereof.

In taking action on an application for an Historic Preservation Permit Amendment, the Director of Planning shall consider:

1. The comments of the Historic Landmarks Commission;
2. The purposes of the Historic Preservation Ordinance, including the preservation of historic landmarks and historic districts, and compatible design of new construction (Municipal Code Section 13.48.010);
3. The historic architectural value and significance of the landmark or district;
4. The texture and materials of the building in question, and the relationship of such features to similar features of other buildings within an historic district;
5. The position of such buildings in relation to the public right of way and other buildings on the site.

The Director of Planning shall find that, subject to such conditions as they may impose, the work will not be detrimental to a historic district or to a structure or feature of significant architectural, cultural, historical, aesthetic, or engineering interest or value, and is consistent with the spirit and purposes of the Historic Preservation Ordinance.

Analysis: The subdivision of the larger parcel will cause the historic building to be located on a smaller 0.44-gross acre parcel. The position of the relocated Smith House and the ancillary buildings will maintain a prominent frontage along San Felipe Road; however, the house has a new solid six-foot tall white stucco wall, constructed at the rear of the Smith House, which appears to disengage the building from its natural green setting. The Smith House is eligible to enter into a Mills Act Contract as a City Landmark, but the reduced lot size for the historic house and the construction of the new six-foot-high site wall, which varies in setbacks from 5 feet to 10 feet in the rear, appears to cause a loss of spatial relationship which the City Landmark building once retained within a greater naturally green landscape setting.

The historic Smith House and the ancillary buildings have been moved, repaired and rehabilitated. The buildings face San Felipe Road and are placed in a manner similar to the original east/west alignment. The previous Historic Preservation Permit (File No. HP16-004) required new landscaping to showcase the significant aspects of the house and its setting, including new meandering pathways leading to the house, and an interpretive sign to inform the public of the historic nature of the site.

A few mature trees have been retained on the northwest side of the parcel. The old citrus orchard grove has been removed and a new orchard grove is proposed to be planted close to the Smith House, as seen in the Landscape plan submitted by the applicant.

The proposed new landscape design will replace significant aspects of its historic landscape; however, the newly constructed site wall separates the Smith House from its natural setting and requires an amendment to the previously approved Historic Preservation Permit and will also require planting of additional new green landscaping to completely cover the rear site wall.

According to a revised Historical Assessment Report dated 3/30/202 submitted by the Historic Architect, John Frolli, the applicant is proposing to landscape the wall on both sides to screen views to the new development and to soften the presence of the wall, and the effect of the proposed landscape mitigation to be applied to the wall would result in a "less than significant impact" on the rehabilitation project.

With the new boundary wall completely covered with new green vines and shrubs, so as to showcase the characteristic of its original natural green setting, and the Smith House already preserved and required to be maintained in perpetuity, the project will be in conformance with the Historic Preservation Ordinance. These are made conditions of approval of this Historic Preservation permit.

Secretary of Interior's Standards. This Historic Preservation Permit Amendment was reviewed in conformance with the Secretary of the Interior's Standards. The following is an analysis of the Secretary of the Interior's Standards for rehabilitation:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

Analysis: The Smith House has been restored. A use for the building after the relocation and restoration of the structure has not been identified to date.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alterations of features and spaces that characterize a property shall be avoided.

Analysis: The Smith House and associated structures were originally located in the center of a larger parcel and after relocation have been preserved and restored in their new location. A new six-foot-tall wall has already been constructed at the proposed subdivision lot line, which results in a new spatial environment for the Smith House. This wall shall be completely covered with green vines and landscaping to provide a softened green visual effect. The applicant has provided a landscape plan, and compliance with the conditions of this Permit would meet this standard.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

Analysis: The rear wall is recognized as a contemporary addition to the setting for the house and is understood as a physical barrier dividing the house from the new senior care living facility. The wall and its proposed landscaping do not convey a false sense of history.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

Analysis: This Standard does not apply as no historic additions or features are being removed as a part of the project.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

Analysis: This Standard does not apply as no changes are being proposed to historic features.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

Analysis: This Standard does not apply as no changes are being proposed to historic features.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

Analysis: This Standard does not apply as no changes are being proposed to historic features.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

Analysis: This Standard does not apply as no resources should be disturbed by the construction of the wall.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Analysis: The solid stucco wall visually affects the Smith House location and staff recommends that the wall should be treated with green landscaping and vines to provide a better spatial relationship and restore the integrity of the historic property in its new environment. This shall be made a condition of approval of the Historic Preservation permit.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Analysis: The new six-foot high wall added along the rear property line, if removed in future, will continue to maintain the integrity of the historic property.

FINDINGS

The Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The proposal is consistent with the Envision San José 2040 General Plan designation of Neighborhood/Community Commercial, and the Historic Preservation Goals promoting the preservation of historically significant structures and districts in order to promote a greater sense of awareness and community identity and to enhance the quality of urban living in that, the historic Smith House and the ancillary buildings have been preserved, rehabilitated, and painted.

Analysis: This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas. Adaptive reuse of the Smith House to any of the enumerated commercial uses under CN Commercial Neighborhood Zoning District would be applicable. Additional uses may be allowed under the historic preservation program, as long as the character defining features are protected and the integrity and historic Landmark status is maintained. This is made a condition of approval No.6 of this permit.

2. The project is consistent with the following goals of the General Plan with respect to historic preservation:

- a. Historic Preservation Goal LU-13 – Landmarks and Districts: Preserve and enhance historic landmarks and districts in order to promote a greater sense of historic awareness and community identity and contribute toward a sense of place.
- b. Historic Preservation Goal LU-16 – Sustainable Practices: Preserve, conserve, and/or rehabilitate historic structures as a means to achieve the City of San José's environmental, economic, and fiscal sustainability goals.

Analysis: By preserving the Smith House, ancillary buildings, and new landscaping, this project has utilized a historic resource to promote San José as a place to live, work and visit. By placing a sign or a marker with historic images and text, the Smith House will provide a historic destination where the community can learn about the area's history. The Smith

House will be reduced to a smaller parcel due to the lot split, but will still retain its associated historic features, and convey its significance with the new and prominent landscaped frontage location along San Felipe Road. The rear boundary wall will be covered with vines and shrubs to showcase a natural green setting, characteristic of its original setting. A Mills Act program would ensure the preservation of the house as well as preserve its history in perpetuity. This is made conditions of approval No. 5 & 6 of this permit.

3. Subject to conditions, the work will not be detrimental to a structure or feature of significant architectural, cultural, historical, aesthetic, or engineering interest or value and is consistent with the spirit and purposes of Chapter 13.48 of the San José Municipal Code.

Analysis: The historic Smith House and the ancillary buildings have been repaired and preserved. The buildings face San Felipe Road and placed in a manner similar to the original east/west setting. New landscape design will showcase the significant aspects of its historic landscape; however, additional landscaping, such as shrubs, trees and vines, have to be planted in front of the new six-foot tall boundary wall in the rear of the Smith house to completely cover it and provide a green visual effect. This is made a condition of approval No.7 of this permit.

4. The environmental impacts of the project will have a less than significant effect under CEQA. Section 15331 Historical Resource Restoration/Rehabilitation of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) consists of projects limited to maintenance, repair, stabilization, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

Analysis: The proposed project will result in a less than significant effect and, therefore, is exempt from further CEQA consideration. The project will conform to the City's Historic Preservation Ordinance with conditions of approval of this Historic Preservation Permit and to the Secretary of the Interior's Standards for the Treatment of Historic Properties, as analyzed above.

The smaller parcel will not change the site's historical significance and will not compromise the integrity of the Smith House. Based on the historic evaluation report by John Frolli, revised March 30, 2020, the Smith house will continue to qualify as a City Landmark Structure. The wall is considered a minor addition at the rear of the Smith House which will be completely covered with green vines and landscaping and will be consistent with the Secretary of Interior's Standards. The project has, therefore, been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331 for Historical Resources and Rehabilitation.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit Amendment.** Per Section 20.1 00.290(B), should the permittee fail to file a timely and valid appeal of this Permit Amendment within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit Amendment by the permittee; and

- b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit Amendment or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
3. **Conformance with Plans.** Construction and development shall conform to the conditions in this Permit and the approved Historic Preservation Permit plans, entitled "Smith House Plans" dated received February 7, 2020 (referred to herein as the "Approved Plans" or the "Approved Plan Set"), and the Historic report, entitled "Historic Evaluation Report" dated Revised March 30, 2020, on file with the Department of Planning, Building, and Code Enforcement. If there are inconsistencies between the Permit Amendment and the Approved Plans, this Permit Amendment takes precedence.
4. **Compliance with Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws and regulations. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code or any other law.
5. **Conformance to other Permits.** Unless specifically modified with this permit, this project shall conform to all the requirements of previous permits and reports including but not limited to: HP16-004, HLA86-031-01 and MA19-004.
6. **Interpretive Sign.** The permittee shall install and maintain an interpretive sign or marker at the relocated Smith House to inform the public of the history of the site.
7. **Smith House Preservation.** The preservation of the Smith House will continue per the approved Preservation Plan outlined in the Mills Act Contract and in all Historic Preservation Permits.
8. **Adaptive Reuse.** The future adaptive reuse of the Smith House shall assure that character defining features are protected and the integrity and the historic City Landmark status is maintained in perpetuity. Mills Act program shall be used to facilitate continued preservation of the historic house including interiors.
9. **Green Wall.** The permittee shall plant green shrubs, trees and vines in front of the rear wall, the subject of this permit, of the Smith House and keep it completely covered at all times to provide the green visual effect and green backdrop and shall maintain the wall, plants and irrigation per conditions of approval no. 10 and 11 below. A photograph after the planting of trees and landscaping shall be submitted electronically to the Project Manager.
10. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
11. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

12. **Deadline for Commencing Construction.** This Historic Preservation Permit Amendment shall automatically expire two years from and after the date of issuance hereof by said Director of Planning, Building and Code Enforcement if within such two-year period construction of buildings, pursuant to and in accordance with the provisions of this Historic Preservation Permit Amendment, has not commenced. The date of issuance is the date this Permit Amendment is approved by the Director of Planning, Building and Code Enforcement. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit Amendment for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
13. **Exterior Alterations.** No demolition or construction may be implemented unless and until this Historic Preservation Permit Amendment is released to the Building Division.
14. **Conformance with Municipal Code.** No part of this approval shall be construed to permit violation of any part of the San José Municipal Code.
15. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, *HPA16-004-01*, shall be printed on all construction plans submitted to the Building Division.
16. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
17. **Nuisance.** As required by Title 20 of the San José Municipal Code, construction on this site shall be conducted in a manner, which does not create a public or private nuisance. The permittee must abate any such nuisance immediately upon notice.
18. **Revocation, Suspension, Modification.** This Historic Preservation Permit Amendment may be revoked, suspended or modified by the Director of Planning, Building and Code Enforcement, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Historic Preservation Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued this **17th day of June 2020**.

Rosalynn Hughey, Director
Planning, Building and Code Enforcement

Deputy